IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION No. 8033 of 1995

Between:

Visakhapatnam Urban Development Authority rep.by its Secretary,
Udyog Bhavan Complex, Visakhapatnam
rep.by its Secretary Mr.M.A.Azeem. ..... PETITIONER

AND

1 Govt. of A.P. rep.by its Secretary
L.E. & Trg. (LAB-I), Dept. Secretariat Buildings
Hyderabad.
2 The Industrial Tribunal-cum-Labour Court, Visakhapatnam
rep.by its Chairman and Presiding Officer.
3 G.Subba Rao S/o Chittaiah
LIG-B/418, Sagarnagar, Visakhapatnam. .....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of writ of certiorari calling for the records of the second respondent herein containing the award Dt.1/10/94 made in ID.No.57/94 and the notification Dt.8/11/94 vide GO.Rt.No.574 of the 1st respondent and quash the same as illegal and without jurisdiction.

Counsel for the Petitioner : Ms.SUMALINI REDDY

Counsel for Respondents 1&2 : G.P. FOR LABOUR

The Court made the following :

ORDER:

Heard the learned counsel for petitioner and the learned counsel for respondents.

This writ petition is filed by the petitioner-management challenging the Award passed by the Industrial Tribunal-cum-Labour Court, Visakhapatnam in I.D.No. 57 of 1994 dated 1.10.1994.

The third respondent-workman herein laid a claim petition in I.D.No. 57 of 1994 under Section 2A(2) of the Industrial Disputes Act, 1947 as amended by A.P. Amendment Act, 32/87 (for short "the Act"). It is the case of the workman that he was appointed by the Executive Engineer, Visakhapatnam as Valve Operator in the Engineering Section of the writ petitioner for supply of water. The workman was assured that he would be given permanent employment at the time of handing over of water reservoir to the Panchayat Raj Department. The workman was paid a consolidated salary of Rs.918/- per month by the Executive Engineer and his signatures were obtained on the revenue stamp affixed in the register. While so, on 6.8.1993 all of a sudden, without issuing any show cause notice, the Executive Engineer informed the workman that his services were terminated without following the provisions of Section 25-F of the Act nor compensation was paid as required thereunder. Therefore, his termination from service was bad in law.

The writ petitioner-management filed written statement denying the allegations made by the respondent-workman. It is stated that the Visakhapatnam Urban Development Authority (for short "VUDA") took up the project of construction of a Colony called "Sagar Nagar" and entrusted the work to various contractors. The said work includes, construction of a overhead tank known as "Elevated Level Service Reservoir" which is intended for supplying water to the flats and houses in Sagar Nagar Colony through pipelines. It is stated that the workman was originally worked under a contractor who executed the work of laying the pipeline. Thereafter the workman approached the VUDA Officers concerned and accordingly on the request of the workman, his services were utilized purely on daily wages as Non-Mazdoor.

Before the Labour Court, workman was examined himself as W.W.1 and Ex.W.1 was marked on his behalf. On behalf of Management, M.W.1 was examined and no documents were marked on its behalf. The Industrial Tribunal-cum-Labour Court, Visakhapatnam after going through the entire evidence on record, both documentary and oral, came to the conclusion that the services of the workman were terminated contrary to the provisions of Section 25-F of the Act, since he had worked for more

than 240 days preceding the date of his termination, and directed the Management to reinstate the workman into service as Valve Operator and pay all backwages with continuity of service. Aggrieved by the said Award dated 1.10.1994, the Management filed the present writ petition.

Smt.Ms.Sumalini Reddy, learned counsel for petitioner-management submits that the third respondent-workman did not put in 240 days of service and therefore termination of his service could not have attracted the provisions of Section 25-F of the Act, therefore, the Labour Court erred in holding that the third respondent-workman has worked for 240 days continuously preceding the date of termination from service and he is entitled for reinstatement and backwages. She further submits that assuming that the services of the third respondent-workman were terminated without following the procedure as laid down under Section 25-F of the Act, there was no warranting circumstance requiring the Labour Court to grant backwages to the workman since he was discontinued from service.

I have gone through the Award passed by the Labour Court dated 1.10.1994 and also the evidence available on record. M.W.1, who is none other than management witness himself categorically, stated that the workman has worked for 240 days. In the light of the same, the Labour Court came to the conclusion that the workman has worked for 240 days and as such while terminating the service, the management admittedly had not followed the procedure as prescribed under Section 25-F of the Act by giving notice or payment of one month salary or other compensation as required therein. Insofar as this finding of the Labour Court is concerned, it does not call for any interference at the hands of this Court in view of the evidence of management witness itself.

However, whether the third respondent-workman was entitled for backwages for the period he was kept out of service is concerned, the workman did not assert anywhere in his pleadings that during that period he was not gainfully employed nor such statement was made before the Labour Court in this regard. Admittedly, the workman was unskilled worker and it is not that he was not expected to get any job elsewhere. Therefore, this Court is of the opinion that granting of backwages by the Labour Court for the period the workman was kept out of service is not based on reasons furnished or evidence let in by both the parties. Thus, the award of the Labour Court to the extent of awarding backwages to the third respondent-workman is liable to be set aside.

In the result, the award of the Labour Court dated 1.10.1994 is modified as follows:

The writ petitioner-Management is directed to reinstate the workman into service as Valve Operator with continuity of service, but without any backwages.

The writ petition is allowed to the extent indicated above.

No order as to costs.

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C.V.RAMULU, J

Date: 17.2.2005

DA

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on the Seventeenth day of February, Two Thousand and Five.

REGISTRAR

To

1 The Secretary, Govt. of A.P., L.E. & Trg. (LAB-I), Dept. Secretariat Buildings, Hyderabad.
2 The Chairman and Presiding Officer, Industrial Tribunal-cum-Labour Court, Visakhapatnam.

3 Two CCs to the G.P. for Labour, High Court Buildings, Hyderabad (OUT).

4 Two CD copies.